

**ORIGINAL OPEN MEETING**



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**MEMORANDUM**

TO: THE COMMISSION

Arizona Corporation Commission  
**DOCKETED**

RECEIVED

2011 JUL 29 A 9:53

FROM: Utilities Division

JUL 29 2011

AZ CORP COMMISSION  
DOCKET CONTROL

DATE: July 29, 2011

DOCKETED BY

RE: MCLEODUSA TELECOMMUNICATIONS SERVICES, INC. DBA PAETEC  
BUSINESS SERVICES FOR A FINANCING ORDER AUTHORIZING VARIOUS  
FINANCING TRANSACTIONS (DOCKET NO. T-03267A-11-0233)

**Introduction**

On June 2, 2011, McLeodUSA Telecommunications Services, LLC d/b/a PAETEC Business Services ("PAETEC Business" or "Applicant"), filed an application seeking approval to participate in proposed new financing arrangements contemplated by its ultimate corporate parent, PAETEC Holding Corp., pursuant to Arizona Revised Statutes ("A.R.S.") § 40-285 and Arizona Administrative Code ("A.A.C.") R14-2-804. PAETEC Business has indicated that the financing arrangements require regulatory approval of PAETEC Business's participation in the financings no later than August 28, 2011. PAETEC requests that the Arizona Corporation Commission ("Commission") act expeditiously to grant requested approval of its application no later than the Commission's Open Meeting scheduled for August 16- 17, 2011.

**Background of Applicants**

**PAETEC Holding Corp.**

PAETEC Holding Corp. is a publicly traded Delaware corporation with principal offices located at One PAETEC Plaza, 600 Willow Brook Office Park, Fairport, New York 14450. PAETEC Holding Corp is the parent of PAETEC Corp., a Delaware corporation that indirectly holds 100 percent of PAETEC Business. In Arizona, PAETEC Holding Corp has three wholly owned subsidiaries that provide regulated communications services: PAETEC Business, PAETEC Communications, Inc. and Talk America, Inc.

**McLeodUSA Telecommunications Services, LLC d/b/a PAETEC Business Services**

PAETEC Business is an Iowa limited liability company with principal offices located at One Martha's Way, Hiawatha, Iowa 52233. PAETEC Business is authorized to provide resold and/or facilities-based telecommunications services in 48 states and the District of Columbia and provides integrated communications services, including local services, primarily in 20 Midwest, Southwest, Northwest, and Rocky Mountain states. In Arizona, PAETEC Business is authorized to provide resold and facilities-based local exchange and exchange access services pursuant to Decision No. 62627, granted on June 9, 2000. PAETEC Business is also authorized to resell

interexchange telecommunications services pursuant to Decision No. 61001, granted on July 16, 1998. PAETEC Business is a Class A investor-owned public service corporation subject to the Commission's Public Utility Holding Companies and Affiliated Interest Rules, A.A.C. R14-2-801 *et seq.*

### The Proposed Transaction

The Applicant represents the following in its application:

The Commission authorized PAETEC Business to participate in up to \$600 million in financing arrangements by PAETEC Holding Corp. on November 1, 2010, in Decision No. 71942. Financing arrangements for \$450 million in senior notes have been completed. On May 31, 2011, PAETEC Holding Corp entered into an agreement that provides for a \$100 million term loan and a \$125 million revolving loan. The aggregate \$225 million loan amount exceeds, by \$75 million, the unused portion of the financing authorized by the Commission in Decision No. 71942

PAETEC Business seeks approval to provide a guaranty and related pledge of its assets as security for an additional \$75 million in financing arrangements. PAETEC Business, and certain of PAETEC Holding Corp.'s other subsidiaries, are expected to provide a guaranty and related pledges of assets as security for the additional financing at closing or upon receipt of the necessary approval, but in no event later than 90 days after closing. PAETEC Holding Corp. anticipates using the proceeds from the additional financing for one or more targeted acquisitions, as well as pay for transaction costs, finance new capital expenditures and for working capital and other general corporate purposes.

### Staff's Analysis and Conclusions

PAETEC Business states in its application that prepaid customer funds and deposits will not be encumbered as part of the security for the proposed financing and confirms that a \$600,000 performance bond remains in place. PAETEC Business published notice of its financing application in the Arizona Republic on June 7, 2011. The corresponding affidavit was filed in Docket Control on June 13, 2011.

A.R.S. § 40-285 requires public service corporations to obtain Commission authorization to "sell, lease, assign, mortgage or otherwise dispose of or encumber" certain utility assets. The statute serves to protect captive customers from a utility's act to dispose of any of its assets that are necessary for the provision of service; thus, it serves to preempt any service impairment due to disposal of assets essential for providing service.

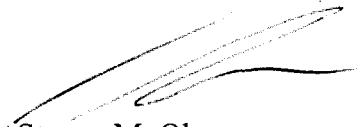
A.A.C. R14-2-804 requires that a utility will not consummate certain financial transactions without prior approval of the Commission. The rule requires utilities to provide information that allows the Commission to determine if transactions would impair the financial

status of the public utility, otherwise prevent it from attracting capital at fair and reasonable terms, or impair the ability of the public utility to provide safe, reasonable and adequate service.

Based on its analysis of the proposed transaction, Staff concludes that the transaction would not impair the financial status of the Company, would not impair its ability to attract capital, nor would it impair the ability of the Company to provide safe, reasonable, and adequate service. Additionally, Staff concludes that a pledge of the Applicant's assets would not impair the availability of service to customers since the Applicant provides competitive services that are available from alternative service providers.

Recommendations

Staff recommends approval of the Applicant's request to provide a guaranty and related pledge of assets as described in its application subject to the condition that all customer deposits and prepayments be excluded from the proposed transactions. Staff further recommends that the Company file copies of the executed security documents and copies of the loan documents with Docket Control, as a compliance item in this matter, documents within 90 days of the execution of any financing transaction authorized herein.



Steven M. Olea  
Director  
Utilities Division

SMO:AFF:lhmfJFW

ORIGINATOR: Armando F. Fimbres

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

GARY PIERCE  
Chairman  
BOB STUMP  
Commissioner  
SANDRA D. KENNEDY  
Commissioner  
PAUL NEWMAN  
Commissioner  
BRENDA BURNS  
Commissioner

IN THE MATTER OF THE APPLICATION  
OF MCLEODUSA  
TELECOMMUNICATIONS SERVICES,  
INC. DBA PAETEC BUSINESS SERVICES  
FOR A FINANCING ORDER  
AUTHORIZING VARIOUS FINANCING  
TRANSACTIONS

DOCKET NO. T-03267A-11-0233  
DECISION NO. \_\_\_\_\_  
ORDER

Open Meeting  
August 16 and 17, 2011  
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On June 2, 2011, McLeodUSA Telecommunications Services, LLC d/b/a PAETEC Business Services ("PAETEC Business" or "Applicant"), filed an application seeking approval to participate in proposed new financing arrangements contemplated by its ultimate corporate parent, PAETEC Holding Corp., pursuant to Arizona Revised Statutes ("A.R.S.") § 40-285 and Arizona Administrative Code ("A.A.C.") R14-2-804. PAETEC Business has indicated that the financing arrangements require regulatory approval of PAETEC Business's participation in the financings no later than August 28, 2011. PAETEC requests that the Commission act expeditiously to grant requested approval of its application no later than the Commission's Open Meeting scheduled for August 16- 17, 2011.  
...  
...

1 Background of Applicants

2 **PAETEC Holding Corp.**

3 2. PAETEC Holding Corp. is a publicly traded Delaware corporation with principal  
4 offices located at One PAETEC Plaza, 600 Willow Brook Office Park, Fairport, New York 14450.  
5 PAETEC Holding Corp is the parent of PAETEC Corp., a Delaware corporation that indirectly  
6 holds 100 percent of PAETEC Business. In Arizona, PAETEC Holding Corp has three wholly  
7 owned subsidiaries that provide regulated communications services: PAETEC Business, PAETEC  
8 Communications, Inc. and Talk America, Inc.

9 **McLeodUSA Telecommunications Services, LLC d/b/a PAETEC Business Services**

10 3. PAETEC Business is an Iowa limited liability company with principal offices  
11 located at One Martha's Way, Hiawatha, Iowa 52233. PAETEC Business is authorized to provide  
12 resold and/or facilities-based telecommunications services in 48 states and the District of  
13 Columbia and provides integrated communications services, including local services, primarily in  
14 20 Midwest, Southwest, Northwest, and Rocky Mountain states.

15 4. In Arizona, PAETEC Business is authorized to provide resold and facilities-based  
16 local exchange and exchange access services pursuant to Decision No. 62627, granted on June 9,  
17 2000. PAETEC Business is also authorized to resell interexchange telecommunications services  
18 pursuant to Decision No. 61001, granted on July 16, 1998. PAETEC Business is a Class A  
19 investor-owned public service corporation subject to the Commission's Public Utility Holding  
20 Companies and Affiliated Interest Rules, A.A.C. R14-2-801 *et seq.*

21 The Proposed Transaction

22 The Applicant represents the following in its application:

23 5. The Commission authorized PAETEC Business to participate in up to \$600 million  
24 in financing arrangements by PAETEC Holding Corp. on November 1, 2010, in Decision  
25 No. 71942. Financing arrangements for \$450 million in senior notes have been completed.

26 6. On May 31, 2011, PAETEC Holding Corp entered into an agreement that provides  
27 for a \$100 million term loan and a \$125 million revolving loan. The aggregate of \$225 million

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1 exceeds, by \$75 million, the unused portion of the financing already authorized by the  
2 Commission in Decision No. 71942.

3 7. PAETEC Business seeks approval to provide a guaranty and related pledge of its  
4 assets as security for an additional \$75 million in financing arrangements. PAETEC Business, and  
5 certain of PAETEC Holding Corp.'s other subsidiaries, are expected to provide a guaranty and  
6 related pledges of assets as security for the additional financing at closing or upon receipt of the  
7 necessary approval, but in no event later than 90 days after closing.

8 8. PAETEC Holding Corp. anticipates using the proceeds from the additional  
9 financing for one or more targeted acquisitions, as well as pay for transaction costs, finance new  
10 capital expenditures and for working capital and other general corporate purposes.

11 9. PAETEC Business states in its application that prepaid customer funds and deposits  
12 will not be encumbered as part of the security for the proposed financing and confirms that a  
13 \$600,000 performance bond remains in place.

14 10. PAETEC Business published notice of its financing application in the Arizona  
15 Republic on June 7, 2011. The corresponding affidavit was filed in docket control on June 13,  
16 2011.

17 11. A.R.S. § 40-285 requires public service corporations to obtain Commission  
18 authorization to "sell, lease, assign, mortgage or otherwise dispose of or encumber" certain utility  
19 assets. The statute serves to protect captive customers from a utility's act to dispose of any of its  
20 assets that are necessary for the provision of service; thus, it serves to preempt any service  
21 impairment due to disposal of assets essential for providing service.

22 12. A.A.C. R14-2-804 requires that a utility will not consummate certain financial  
23 transactions without prior approval of the Commission. The rule requires utilities to provide  
24 information that allows the Commission to determine if transactions would impair the financial  
25 status of the public utility, otherwise prevent it from attracting capital at fair and reasonable terms,  
26 or impair the ability of the public utility to provide safe, reasonable and adequate service.

27 13. Based on its analysis of the proposed transaction, Staff has concluded that the  
28 transaction would not impair the financial status of the Company, would not impair its ability to

1 attract capital, nor would it impair the ability of the Company to provide safe, reasonable, and  
2 adequate service.

3 14. Staff had concluded that a pledge of the Applicants' assets would not impair the  
4 availability of service to customers since the Applicant provides competitive services that are  
5 available from alternative service providers.

6 15. Staff has recommended approval of the Applicant's request to provide a guaranty  
7 and related pledge of assets as described in its application subject to the condition that all customer  
8 deposits and prepayments be excluded from the proposed transactions.

9 16. Staff has further recommended that the Company file copies of the executed  
10 security documents and copies of the loan documents with Docket Control, as a compliance item  
11 in this matter, within 90 days of the execution of any financing transaction authorized herein.

#### 12 CONCLUSIONS OF LAW

13 1. McLeodUSA Telecommunications Services, LLC d/b/a PAETEC Business  
14 Services is a public service corporation within the meaning of Article XV of the Arizona  
15 Constitution and A.R.S. § 40-285.

16 2. The Commission has jurisdiction over McLeodUSA Telecommunications Services,  
17 LLC d/b/a PAETEC Business Services and the subject matter in this filing.

18 3. The Commission, having reviewed the filing and Staff's Memorandum dated  
19 July 29, 2011, concludes that it is in the public interest to grant approval as proposed and discussed  
20 herein.

#### 21 ORDER

22 IT IS THEREFORE ORDERED that the application of McLeodUSA Telecommunications  
23 Services, LLC d/b/a PAETEC Business Services seeking approval pursuant to A.R.S. § 40-285  
24 and A.A.C. R14-2-804 to participate in proposed new financing arrangements contemplated by its  
25 ultimate corporate parent, PAETEC Holding Corp. described herein, be and hereby is approved.

26 IT IS FURTHER ORDERED that McLeodUSA Telecommunications Services, LLC d/b/a  
27 PAETEC Business Services be authorized to engage in any transactions and to execute any  
28 documents necessary to effectuate the authorizations granted.

1 IT IS FURTHER ORDERED that the application of McLeodUSA Telecommunications  
2 Services, LLC d/b/a PAETEC Business Services is subject to the condition that all customer  
3 deposits and prepayments be excluded from encumbrance as part of the security for the proposed  
4 financing.

5 IT IS FURTHER ORDERED that McLeodUSA Telecommunications Services, LLC d/b/a  
6 PAETEC Business Services file copies of the executed security documents and copies of the loan  
7 documents with Docket Control, as a compliance item in this matter, within 90 days of the  
8 execution of any financing transaction authorized herein.

9 IT IS FURTHER ORDERED that this Decision shall be become effective immediately.

10 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

11  
12 CHAIRMAN

COMMISSIONER

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14  
15 COMMISSIONER

COMMISSIONER

COMMISSIONER

16 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,  
17 Executive Director of the Arizona Corporation Commission,  
18 have hereunto, set my hand and caused the official seal of  
19 this Commission to be affixed at the Capitol, in the City of  
20 Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

21 \_\_\_\_\_  
22 ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

23 DISSENT: \_\_\_\_\_

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25 DISSENT: \_\_\_\_\_

26 SMO:AFF:lhmfJFW  
27  
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Decision No. \_\_\_\_\_



1 SERVICE LIST FOR: McLeodUSA Telecommunications Services, Inc.  
2 DOCKET NO. T-03267A-11-0233

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